

AG Contract No KR00 1018TRN  
ADOT ECS File No JPA 00-94  
Project No TEA-TMB-0(1)P  
TRACS No SL407 01C  
Project: Allen Street Pedestrian Improvements  
3<sup>rd</sup> Street – 6<sup>th</sup> Street

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE DEPARTMENT OF TRANSPORTATION  
AND  
THE CITY OF TOMBSTONE

THIS AGREEMENT is entered into 31 July, 2000,  
pursuant to the provisions of Arizona Revised Statutes Section 11-951 through 11-954, as amended,  
between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION,  
(the "State"), and the CITY OF TOMBSTONE, acting by and through its MAYOR and CITY COUNCIL  
(the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, the design and construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.

4. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for approval.

=====

NO. 24138

Filed with the Secretary of State

Date Filed: 07/31/00

Retrey Bayless

Secretary of State

By Vicky D. Haene-wald

5. The only interest of the State in this project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

6. The work embraced by this agreement and the estimated cost is as follows: Construct Pedestrian Facility Improvements.

Construction (SL407 01C)	
Estimated Construction Cost	\$475,000 00
Federal Aid Funds @ 94 3%	\$447,925 00
Tombstone City funds @ 5.7%	\$ 27,075 00

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA and the City will proceed to construct the project; such project to be performed, completed, accepted and paid for in accordance with the approved plans and specifications. The State will enter into a Project Agreement with FHWA covering the work embraced in said construction and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the City shall be obligated to for any expenditure in excess of the estimates herein.

2. Prior to construction, the City shall set aside sufficient funds in the amount determined to be necessary to match federal funds.

3. The City shall acquire, without cost to the State, any necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom, prior to the start of construction.

5. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the City.

6. Upon completion of construction, the City shall provide maintenance unless assumed by another governmental entity.

### III. MISCELLANEOUS PROVISIONS

1 The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. This agreement shall remain in force and effect until completion of the work and related deposits or reimbursements.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7 All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

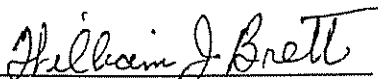
Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

City of Tombstone  
Public Works Director  
PO Box 339  
Tombstone, AZ 85638

8 Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

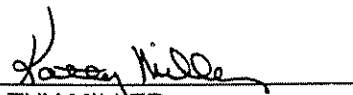
CITY OF TOMBSTONE

By   
WILLIAM BRETT  
Mayor

STATE OF ARIZONA  
Department of Transportation

By   
CATHERINE J. HEGEL  
Contract Administrator

ATTEST

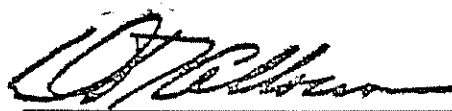
By   
KATHY MILLER  
City Clerk

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RESOLUTION

BE IT RESOLVED on this 24th day of May 2000, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the City of Tombstone for the purpose of defining responsibilities improvements to Allen Street pedestrian path.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

A handwritten signature in black ink, appearing to read 'D. Allocco', is written over a horizontal line.

DAVID R. ALLOCCO, P.E.  
Assistant State Engineer,  
Engineering Technical Group  
for Mary E. Peters, Director

**REGULAR COUNCIL MEETING  
MONDAY, JULY 17, 2000  
7:00 P.M.  
SCHIEFFELIN HALL**

- 1. CALL TO ORDER** Mayor Brett called the Regular Council meeting to order on Monday, July 17, 2000 at 7:00 p m.
- 2. INVOCATION** Given by William J. Brett
- 3. PLEDGE OF ALLEGIANCE** Councilman Joseph Huntsman led Mayor Brett, the Common Council and the general public in reciting the Pledge of Allegiance.
- 4. ROLL CALL**
- |                                |         |
|--------------------------------|---------|
| Councilman Dustin Escapule     | Present |
| Councilman Joseph Huntsman     | Present |
| Councilman Edward J. Manriquez | Present |
| Mayor Pro-Tem Reischl          | Present |
| Mayor William J. Brett         | Present |

**5. APPROVAL OF MINUTES**

**REGULAR COUNCIL MEETING JUNE 19, 2000**

**APPROVED**

**SPECIAL COUNCIL MEETING JUNE 26, 2000**

**APPROVED as corrected**

**6. DISCUSSION AND/OR ACTION ON FINANCE/ACCOUNTS PAYABLE  
FROM JUNE 14, 2000 TO JULY 14, 2000:**

Mayor Brett asked for a motion to approve accounts payable in the amount of \$198,248.56.

**MOTION** by Councilman Escapule and **SECOND** by Councilman Huntsman to approve accounts payable from June 14, 2000 to July 14, 2000 in the amount of \$198,248.56.

**MOTION CARRIED UNANIMOUSLY**

Public Works Director Alex Gradillas said the City also took advantage of the steel piping that will be used as conduit, which was installed when the old gas lighting existed.

Kathy Miller, City Clerk, discussed the three lighting designs, and recommended if needed that the Council should consider purchasing these street light poles. She said the light poles, which have been approved for installation by the State Historic Preservation Office (SHPO), will cost less for the City to install than the contractor's cost for the project.

Mayor Brett said the boards to be laid down are plank type, Douglas fir, which are supposed to be dried to 19 percent of water in Tombstone, be level and will be six inch by two inch boards treated with preservative.

**MOTION** by Councilman and Huntsman and **SECOND** by Councilman Escapule to approve and Intergovernmental Agreement between the Department of Transportation and the City of Tombstone for project No. TEA-TMB-0(1)P TRACS No SL40701C for project Allen Street pedestrian Improvements 3rd Street - 6th Street.

**MOTION CARRIED UNANIMOUSLY**

**E. DISCUSSION AND/OR ACTION ON RESOLUTION NO. 6-2000  
AUTHORIZATION TO SUBMIT APPLICATION AND IMPLEMENT CDBG  
PROJECTS:**

**MOTION** by Councilman Huntsman and **SECOND** by Councilman Escapule to adopt Resolution No. 6-2000 giving Authorization for the City to Submit Application and Implement CDBG Projects.

**MOTION CARRIED UNANIMOUSLY**

Mayor Brett read Resolution No. 6-2000.

**F. DISCUSSION AND/OR ACTION ON RESOLUTION NO. 7-2000  
COMMITMENT OF LOCAL LEVERAGED FUNDS:**

**MOTION** by Councilman Escapule and **SECOND** by Councilman Manriquez to approve Resolution No. 7-2000 for the commitment of Local Leveraged Funds in the amount of \$50,000 00.

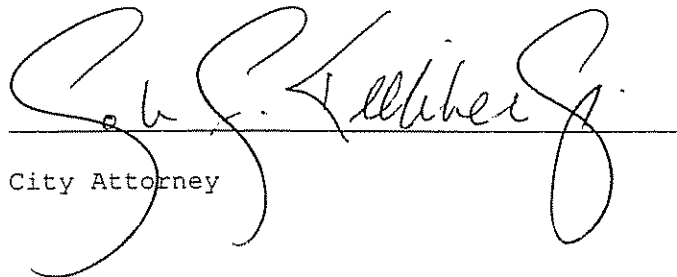
**MOTION CARRIED UNANIMOUSLY**

Mayor Brett read Resolution No. 7-2000.

APPROVAL OF THE TOMBSTONE CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the CITY OF TOMBSTONE and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 17 day of July, 2000.

  
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City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ 85007-2926

JANET NAPOLITANO  
ATTORNEY GENERAL

TRN Main: (602) 542-1680

Direct: (602) 542-8855

Fax: (602) 542-3646

MAIN PHONE: (602) 542-5025

FACSIMILE: (602) 542-4085


**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR00-1018TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED: July 27, 2000

JANET NAPOLITANO  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:ggt

Enc.

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